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HB 1078

RELATING TO THE CONSERVATION, MANAGEMENT AND PROTECTION
OF ENDANGERED OR THREATENED SPECIES OF WILDLIFE OR PLANTS.

Statement for
House Committee on Water, Land Use Development and Hawaiian Homes
and Ecology and Environmental Protection
Public Hearing 8 March 1977

by

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HB 1078 would amend certain of the provisions in Chapter 195 D of Hawaii Revised Statutes, the chapter dealing with conservation of wildlife and plants. This statement on these bills has been submitted for review to the legislative subcommittee of the Environmental Center of the University of Hawaii. It does not represent an institutional position of the University.

A number of the amendments proposed in HB 1078 (SB 1202) were previously proposed in HB 220-77 (SB 138-77). As the Environmental Center commented earlier (RL:0196, 16 February 1977), the amendments proposed in these other bills appeared favorable because they would allow Hawaii to qualify for Federal grants-in-aid without changing the purpose of Act 65 (1975) and without reducing State authority in matters pertaining to endangered and threatened species. However, the additional changes proposed in HB 1078 seem less favorable in these respects.

With respect to species in need of special conservation measures, the additional amendments proposed in SB 1202 would differentiate between the controls prescribed for plants and those prescribed for animals. The differentiation would be made in HRS Sec. 195 D-3, relating to species in need of conservation generally, through deleting the words "or plants" in subsec. (c) (p. 2, l. 10) and making special provisions for plants in a new subsec. (d) (p. 2, ls. 13-17); and in HRS Sec. 195 D-4, relating to endangered or threatened species, through deleting the words "or plant" in the initial paragraph of subsec. (e) (p. 2, l. 21) and adding special provisions respecting plants later in the subsec. (p. 3, ls. 9-23).

These additional amendments would have considerable consequences:

1. The taking of any species of plant deemed by DLNR to be in need of conservation is currently unlawful and prohibited by HRS Sec. 195 D-3 except as permitted by departmental regulation or permit. As defined in HRS Sec 195 D (2) j, "take means to cut, collect, uproot, destroy, injure or possess endangered or threatened species of plants or to attempt to engage in any such conduct." The proposed changes would make such activities lawful on private lands, Federal lands, and possibly county lands. The resulting legal allowance for destruction of endangered and threatened plant species over major land areas of Hawaii would contradict the purpose of the original Act, which was to ensure the continued perpetuation of such plants and their habitats. Also, the effectiveness of other provisions of the Act would be severely limited if "take" were permitted on non-state lands. Sec. 3 calls for developing information to determine conservation measures necessary for successful sustenance of plant species, an activity that could become nearly impossible for many species under the newly proposed amendments. Likewise, attempts to carry out programs for the conservation, management and protection of species and their associated ecosystems as mandated in Sec. 5 would be very difficult if no protection is afforded against taking species from non-state lands.

It appears important to afford protection to endangered and threatened plant species on non-state lands as well, at least in terms of purposeful destruction. Allowance could be made by regulation to protect each species in its present range if feasible, or in hardship cases to have scientists transfer the species to an intact portion of its former range as close as possible to its extant location.

Thus, we suggest either: i) that the amendment of HRS Sec. 195 D-3 be provided as in HB 220; or ii) that in the new subsec. (d) an amendment be added to prohibit purposeful destruction of endangered or threatened species of plants. By regulatory authority the department could then provide for exceptions.

2. HRS Sec. 195 D-4 currently prohibits the processing, selling, offering for sale, delivering, carrying, transporting or shipping by any means whatsoever of any endangered or threatened species, except under permit for scientific purposes or to enhance the propagation or survival of the affected species. Although the new proposed amendment of this section is nearly identical to the Federal Endangered Species Act of 1973, it is not appropriate in State law or appropriate to conditions in Hawaii where such a large proportion of native species are endangered.

Under the new proposals, processing and intrastate commerce of species would become legal. This, when combined with the proposals regarding "take", would make legal the harvesting of endangered or threatened species on private lands, their processing and commercial use in Hawaii. We, therefore, suggest that prohibitions be continued under state law against processing, and against intrastate commerce in endangered or threatened species.

With our suggestions, but not with the proposals of HB 1078, protection to endangered and threatened species would be afforded through prohibition of:

- a) the purposeful destruction of plants growing anywhere in Hawaii rather than just on state-owned lands;
- b) all commercial exploitation rather than only interstate and foreign commerce.

Our suggestions should be more favorable in terms of qualifying for Federal grants-in-aid and in some aspects of enforcement.